

Gary B. Rudolph, Esq. (#101921)  
James F. Lewin, Esq. (#140268)  
SPARBER RUDOLPH ANNEN, APLC  
A Professional Law Corporation  
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San Diego, CA 92101  
(619) 239-3600

Attorneys for Gerald H. Davis, Trustee

**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

In re	) Case No. 07-03657-LT7
BASIL RAFFO (-2541),	) <b>DECLARATION OF GARY B.</b>
	) <b>RUDOLPH, ESQ. IN SUPPORT OF</b>
	) <b>TRUSTEE'S OBJECTIONS TO</b>
Debtor.	) <b>DEBTOR'S AMENDED EXEMPTIONS</b>
	) <b>FOR INDIVIDUAL RETIREMENT</b>
	) <b>ACCOUNTS</b>

I, Gary B. Rudolph, declare:

1. I am a shareholder of Sparber Rudolph Annen, APLC, attorneys for Gerald H. Davis, Trustee in the within matter. I have personal knowledge of the following facts, except as to those matters stated upon information and belief which I believe to be true, and if called upon to testify as a witness, could do so competently.

2. On July 10, 2007, Basil Raffo ("Debtor") filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code as Case No. 07-03657-LT7, and Gerald H. Davis was appointed as Chapter 7 Trustee.

3. The bankruptcy estate created by the filing of the Debtor's bankruptcy petition is hereinafter referred to as "Estate".

4. In Schedule B, the Debtor scheduled interests in two individual retirement accounts ("IRA") in the approximate total amount of \$39,828.95, held by Ameriprise Financial Corporation. The IRA accounts are more particularly described as follows:

<u>Description of Property</u>	<u>Specified Law Providing Each Exemption</u>	<u>Scheduled Amount of Each Exemption</u>	<u>Approx. Current Value of Property Without Deducting Exemptions</u>
Basil Raffo, Separate IRA Ameriprise Acct. No. 0010114547523002	CCP § 704.115(b)	\$26,878.61	\$29,751.97
IRA Basil Raffo Ameriprise Acct. No. 0010114547390002	CCP § 704.115(b)	\$12,950.34	\$14,334.75

True and correct copies of the Ameriprise account statements for the above-referenced IRA accounts are attached hereto as Exhibit "A" and "B" respectively and incorporated herein by reference.

5. Based on communication from Debtor's counsel, I am informed and believe (a) that the Debtor is forty-eight years of age; (b) completed high school and took some courses in college; and (c) received a certificate for business marketing courses and also completed paralegal courses. A true and correct copy of e-mail correspondence from the Debtor's counsel which discloses the foregoing information is attached hereto as Exhibit "C" and incorporated herein by reference.

6. On November 7, 2007, the Debtor filed his "Amended Schedule C -Property Claimed As Exempt" with the Court claiming that the above-referenced IRA accounts are exempt under California Code of Civil Procedure ("C.C.P.") §704.115(b). A true and correct copy of the Debtor's Amended Schedule C is attached hereto as Exhibit "D" and incorporated herein by reference.

7. I am informed and believe, based upon debtor's Schedules "A" and "C" that the Debtor holds approximately \$75,000 exempt equity in real property. A true and correct copy of Schedule "A" is attached hereto as Exhibit "E" and incorporated herein by reference. *See also, Exhibit "D", supra.*

1 8. I am informed and believe based upon Debtor's Schedule I that the Debtor  
2 receives income from two sources: (1) as a salaried employee (Schedule I-1.); and (2)  
3 regular income from his own business (Schedule I-7). A true and correct copy of Schedule  
4 I is attached hereto as Exhibit "F" and incorporated herein by reference.

5 9. I am presently unaware of any medical or other conditions of Debtor which  
6 would prohibit or interfere with the Debtor's ability to earn additional income from  
7 employment through his age of retirement.

8 10. My office has scheduled a Bankruptcy Rule 2004 Examination of the Debtor for  
9 June 26, 2008, to examine the Debtor to determine whether the exemption claimed by  
10 Debtor for a private retirement plan under C.C.P. § 704.115(b) is valid and to review and  
11 analyze Debtor's documents in support of the exemption prior to commencement of the  
12 examination. Additionally, and in anticipation of a further amendment to the Debtor's  
13 exemptions, I intend to examine the Debtor regarding whether the amounts in the accounts  
14 are necessary to provide for his support upon retirement pursuant to C.C.P. §§ 704.115  
15 (a)(3) and (e).

16 11. I have consulted with and intend to retain Mark Seward, ChFC, CLU, as an  
17 expert in this matter to provide an analysis of the Debtor's income and expenses during the  
18 Debtor's projected work life and retirement to determine the amount required by Debtor to  
19 support him in retirement. A true and correct copy of Mark Seward's resume is attached  
20 hereto as Exhibit "G" and incorporated herein reference. I have retained Mr. Seward in at  
21 least four or five other cases wherein he was qualified to testify as an expert witness.

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1 Should this Honorable Court determine this Objection to be a Contested Matter, I will  
2 present a formal application on behalf of the Trustee to retain Mr. Seward as an expert  
3 witness in this proceeding.

4 I declare under penalty of perjury under the laws of the United States of America that  
5 the foregoing is true and correct and that this declaration was executed on May 19, 2008  
6 at San Diego, California.

7   
8 \_\_\_\_\_  
GARY B. RUDOLPH

**EXHIBIT A**

January 1, 2007 - December 31, 2007

Account #  
0010 1145 4752 3 002

**RVS Portfolio Builder Total Equity Fund Class A - AXTAX**  
AMERIPRISE TRUST COMPANY  
C/O BASIL G RAFFO  
AS CUSTD FOR THE BASIL G RAFFO SRA

**Account Summary**

Beginning Value	Additions	Withdrawals <sup>1</sup>	Change In Value <sup>2</sup>	Ending Value	Accrued Dividends	Quantity	Ending Price	Estimated Cost Basis <sup>3</sup>
\$27,682.29	\$0.00	\$0.00	\$2,069.68	\$29,751.97	\$0.00	2,619.0120	\$11.3600	\$28,824.73

Date Account Opened: 3/3/2005

**Account Activity Detail**

Date	Description	Amount	Quantity	Price
12/20/2007	Asset & Other Activity			
	Reinvested dividend with capital gains	\$4,329.58	386.5690	\$11.2000
	Long-term capital gains at \$0.93063 per share			
	Dividend income at \$1.01 per share.			

- 1 Includes redemptions, exchanges, taxes withheld and conversions to class A.
- 2 Includes realized gain (loss), unrealized market appreciation (depreciation) and sales change.
- 3 The estimated cost basis may be incomplete or inaccurate and should not be relied upon in preparing your tax return. See the "Disclosures- Estimated Cost Basis and Capital Gain/Loss Information" section of this statement for more information.

Ending value includes all dividends that have accrued during this period. The Ending Value represents the liquidation value of the account, as of the statement date.

**EXHIBIT A-6**

**EXHIBIT B**

January 1, 2007 - December 31, 2007

Account #  
0010 1145 4739 0 002

**RVS Portfolio Builder Total Equity Fund Class A - AXTAX**  
AMERIPRISE TRUST COMPANY  
C/O BASIL RAFFO  
AS CUSTD FOR THE BASIL RAFFO IRA

**Account Summary**

Beginning Value	Additions	Withdrawals <sup>1</sup>	Change In Value <sup>2</sup>	Ending Value	Accrued Dividends	Quantity	Ending Price	Estimated Cost Basis <sup>3</sup>
\$13,337.56	\$0.00	\$0.00	\$997.19	\$14,334.75	\$0.00	1,261,8620	\$11.3600	\$13,888.00

Date Account Opened: 3/3/2005

**Account Activity Detail**

Date	Description	Amount	Quantity	Price
12/20/2007	Asset & Other Activity			
	Reinvested dividend with capital gains	\$2,086.02	186.2520	\$11.2000
	Long-term capital gains at \$0.93063 per share			
	Dividend income at \$1.01 per share.			

- 1 Includes redemptions, exchanges, taxes withheld and conversions to class A.
- 2 Includes realized gain (loss), unrealized market appreciation (depreciation) and sales charge.
- 3 The estimated cost basis may be incomplete or inaccurate and should not be relied upon in preparing your tax return. See the "Disclosures- Estimated Cost Basis and Capital Gain/Loss Information" section of this statement for more information.

Ending value includes all dividends that have accrued during this period. The Ending Value represents the liquidation value of the account, as of the statement date.

**EXHIBIT B-8**

**EXHIBIT C**

**James F. Lewin**

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**From:** Gustavo Bravo [Gbravo@smaha.com]  
**Sent:** Friday, May 16, 2008 3:05 PM  
**To:** James F. Lewin  
**Subject:** RE: In re Basil Raffo - U.S.B.C. Case No. 07-03657 LT

Mr. Lewin:

I am sorry for the time it has taken to respond to your various requests, I have been in depositions this week and have only come back into the office today in the afternoon.

You requested some information on Mr. Raffo and I have spoken to Mr. Raffo today. The information is provided below. If you feel the need for a Rule 2000 exam, please provide me with dates so I can coordinate with Mr. Raffo and my rather busy schedule.

Mr. Raffo was born March 16, 1960, making him forty-eight years of age. He is currently working at the mini-mart and at the Campo Exxon. Mr. Raffo did finish high school and took some courses in college. Although he does not have a degree, he did receive a certificate for business marketing courses and also completed paralegal courses. He has no other special training.

Gustavo E. Bravo

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**From:** James F. Lewin [mailto:jlewin@sparberlaw.com]  
**Sent:** Tuesday, May 13, 2008 3:50 PM  
**To:** gbravo@smaha.com  
**Subject:** In re Basil Raffo - U.S.B.C. Case No. 07-03657 LT

Gustavo:

As we discussed yesterday, with regard to the Trustee's objections to the Debtor's exemptions for individual retirement accounts er C.C.P 704.115(b), we wish to schedule a Bankruptcy Rule 2004 Examination of Debtor for a date and time which is mutually convenient for all parties. The Trustee will also request that the Debtor produce documents prior to the examination for our review. Please contact our office to advise of a range of agreeable dates and times for the examination and production of documents so I may prepare a proposed Stipulation for your review and signature. If you have any questions or require additional information, please do not hesitate to contact our office.

**James F. Lewin**  
Attorney at Law

**SPARBER RUDOLPH ANNEN, APLC**  
701 B Street, Suite 1000  
San Diego, CA 92101-8109  
Phone: (619) 239-3600  
Facsimile: (619) 239-5601  
[jlewin@sparberlaw.com](mailto:jlewin@sparberlaw.com)

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**EXHIBIT** C-10

5/19/2008

**EXHIBIT D**

Official Form 6C (04/07)

IN RE Raffo, Basil

Debtor(s)

Case No.

**AMENDED SCHEDULE C - PROPERTY CLAIMED AS EXEMPT**Debtor elects the exemptions to which debtor is entitled under:  
(Check one box)☐ Check if debtor claims a homestead exemption that exceeds \$136,875.☐ 11 U.S.C. § 522(b)(2)☒ 11 U.S.C. § 522(b)(3)

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTIONS
<b><u>SCHEDULE A - REAL PROPERTY</u></b>			
2135 Greenwich Rd El Cajon, CA Residence	CCCP § 704.730(a)(1)	75,000.00	400,000.00
<b><u>SCHEDULE B - PERSONAL PROPERTY</u></b>			
Refrigerator, stove, washer/dryer, sofa, big screen tv, tv, 2 children's bedroom sets, bedroom set, kitchen appliances, dishes, linens.	CCCP § 704.020	5,000.00	5,000.00
Clothes	CCCP § 704.020	1,100.00	1,100.00
Men's Cross	CCCP § 704.040	10.00	30.00
Basil Raffo Separate IRA - Ameriprise	CCCP § 704.115(b)	26,878.61	26,878.61
IRA Basil Raffo - Ameriprise	CCCP § 704.115(b)	12,950.34	12,950.34
2003 Toyota Tundra	CCCP § 704.010	2,550.00	10,000.00

AMENDED SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

**EXHIBIT D-12**

**EXHIBIT E**

IN RE Raffo, Basil

Debtor(s)

Case No. \_\_\_\_\_

**SCHEDULE A - REAL PROPERTY**

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H" for Husband, "W" for Wife, "J" for Joint or "C" for Community in the column labeled "HWJC." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HWJC	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
2135 Greenwich Rd El Cajon, CA Residence	Fee Simple		400,000.00	250,000.00
550 15th Street #501 San Diego, CA 92101 Condo Vacant	Fee Simple		290,000.00	251,247.00
TOTAL			690,000.00	

(Report also on Summary of Schedules)

SCHEDULE A - REAL PROPERTY

**EXHIBIT E-14**

**EXHIBIT F**

IN RE Raffo, Basil

Case No. \_\_\_\_\_

Debtor(s)

**SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)**

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child.

Debtor's Marital Status <b>Separated</b>	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP(S): <b>Daughter</b> <b>Daughter</b>	AGE(S): <b>15</b> <b>9</b>
EMPLOYMENT: DEBTOR		SPOUSE
Occupation <b>See Schedule Attached</b>		
Name of Employer		
How long employed		
Address of Employer		

**INCOME:** (Estimate of average or projected monthly income at time case filed)

	DEBTOR	SPOUSE
1. Current monthly gross wages, salary, and commissions (prorate if not paid monthly)	\$ <u>1,840.00</u>	\$ _____
2. Estimated monthly overtime	\$ _____	\$ _____
<b>3. SUBTOTAL</b>	<b>\$ <u>1,840.00</u></b>	<b>\$ <u>0.00</u></b>
<b>4. LESS PAYROLL DEDUCTIONS</b>		
a. Payroll taxes and Social Security	\$ <u>236.98</u>	\$ _____
b. Insurance	\$ _____	\$ _____
c. Union dues	\$ _____	\$ _____
d. Other (specify) _____	\$ _____	\$ _____
<b>5. SUBTOTAL OF PAYROLL DEDUCTIONS</b>	<b>\$ <u>236.98</u></b>	<b>\$ <u>0.00</u></b>
<b>6. TOTAL NET MONTHLY TAKE HOME PAY</b>	<b>\$ <u>1,603.02</u></b>	<b>\$ <u>0.00</u></b>
7. Regular income from operation of business or profession or farm (attach detailed statement)	\$ <u>1,250.00</u>	\$ _____
8. Income from real property	\$ _____	\$ _____
9. Interest and dividends	\$ _____	\$ _____
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	\$ _____	\$ _____
11. Social Security or other government assistance (Specify) _____	\$ _____	\$ _____
12. Pension or retirement income	\$ _____	\$ _____
13. Other monthly income (Specify) _____	\$ _____	\$ _____
	\$ _____	\$ _____
<b>14. SUBTOTAL OF LINES 7 THROUGH 13</b>	<b>\$ <u>1,250.00</u></b>	<b>\$ _____</b>
<b>15. AVERAGE MONTHLY INCOME</b> (Add amounts shown on lines 6 and 14)	<b>\$ <u>2,853.02</u></b>	<b>\$ <u>0.00</u></b>
<b>16. COMBINED AVERAGE MONTHLY INCOME:</b> (Combine column totals from line 15; if there is only one debtor repeat total reported on line 15)	<b>\$ <u>2,853.02</u></b>	

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:  
**None**

IN RE Raffo, Basil

Debtor(s)

Case No. \_\_\_\_\_

**SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)**  
Continuation Sheet - Page 1 of 1

EMPLOYMENT:	DEBTOR	SPOUSE
Occupation		
Name of Employer	<b>Campo Mini Mart</b>	
How long employed		
Address of Employer		
Occupation		
Name of Employer	<b>To Market To Market</b>	
How long employed		
Address of Employer		

**EXHIBIT G**

**Marc C. Seward, ChFC, CLU**

14473 Southern Hills Lane · Poway, CA 92064

**PROFESSIONAL EXPERIENCE**

**Wealth Manager - Principal**

*Heritage Wealth Management., San Diego, CA (2006-Present)*

- Cofounder of Heritage Wealth Management LLC. Heritage is a SEC Registered Investment Advisor dedicated exclusively to providing all inclusive wealth solutions for high net worth individuals including tax advisory and preparation, charitable giving and risk management.
- Managed assets in excess of \$250 million for clients including senior corporate executives, closely held companies and high net worth individuals.
- Performed extensive research and analysis of investment products including financial statement analysis and financial modeling.
- Assisted clients with estate planning, retirement planning and investment analysis.
- Evaluation of Stocks, Bonds, Mutual Funds and Institutionally managed accounts.

**Financial Advisor**

*Raymond J. Lucia Companies, Inc., San Diego, CA (1992-2006)*

- Managed assets in excess of \$250 million for clients including senior corporate executives, closely held companies and high net worth individuals.
- Performed extensive research and analysis of investment products including financial statement analysis and financial modeling.
- Assisted clients with estate planning, retirement planning and investment analysis.
- Evaluation of Stocks, Bonds, Mutual Funds and Institutionally managed accounts.

**Financial Advisor**

*Securities America, San Diego, CA (2001-2007)*

- Registered Representative
- Performed extensive research and analysis of investment products including financial statement analysis and financial modeling.
- Assisted clients with estate planning, retirement planning and investment analysis.
- Evaluation of Stocks, Bonds, Mutual Funds and Institutionally managed accounts

**Financial Advisor**

*Acacia Mutual Life Insurance Company, San Diego, CA (1995-2001)*

- Registered Representative
- Performed extensive research and analysis of investment products including financial statement analysis and financial modeling.
- Assisted clients with estate planning, retirement planning and investment analysis.
- Evaluation of Stocks, Bonds, Mutual Funds and Institutionally managed accounts

**Financial Advisor**

*John Hancock Mutual Life Insurance Company, San Diego, CA (1992-1995)*

- Registered Representative
- Performed extensive research and analysis of investment products including financial statement analysis and financial modeling.
- Assisted clients with estate planning, retirement planning and investment analysis.
- Evaluation of Stocks, Bonds, Mutual Funds and Institutionally managed accounts

**EXHIBIT** 6-19

## **EDUCATION**

### **The American College**

- Chartered Life Underwriter Designation 1997
- Chartered Financial Consultant Designation 1994

### **University of San Diego School of Business**

- Bachelor of Business Administration 1992

### **West Valley College**

- Associate of Arts Degree 1990

## **MARC C. SEWARD, ChFC, CLU**

### *Principal*

Mr. Seward began his financial planning career in 1992 and joined Heritage Wealth Management, LLC in 2006. Prior to joining the firm, Mr. Seward worked as a Financial Advisor for a large financial planning firm in San Diego where he managed assets in excess of \$250 million. As a Principal of the firm, Mr. Seward provides comprehensive wealth management expertise and counsel to clients in the areas of financial and estate planning, budgeting, tax planning, investment management, risk management, charitable giving and retirement planning. He received his Chartered Financial Consultant (ChFC) designation in 1994 and his Chartered Life Underwriter (CLU) designation in 1997 from the American College. Mr. Seward received a Bachelor of Business Administration with an emphasis in Finance from the University of San Diego.